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**[Sessions v. Morales-Santana](#), No. 15-1191 (June 12, 2017) (Justice Ginsburg)**

**ISSUES:** Equal Protection, Citizenship, Physical Presence

**HOLDING:** INA § 309(c)—a physical presence exception for children born outside the United States and out of wedlock to a United States citizen mother and alien father—is unconstitutional.

**PRACTICAL EFFECT:** Children born outside the United States to a citizen mother and alien father must now establish that the citizen mother was physically present in the United States for five years (two after age fourteen) prior to the child's birth.

If a child is born outside the United States to married parents, with one parent a United States citizen and the other an alien, then the child only obtains United States citizenship at birth if the citizen parent was physically present in the United States for at least five years prior to the child's birth, two of which must be after the citizen parent was at least fourteen years old. *See* INA § 301(g) (note: this case involved a prior version of the statute with a longer physical presence requirement). However, if the child is born out of wedlock, the INA contains an exception if the citizen parent is the child's mother, requiring only that the citizen mother must establish one year of physical presence in the United States prior to the child's birth. *See* INA § 309(c).

The respondent, born outside the United States to a citizen father and alien mother, challenges this exception as violating the Constitution's Equal Protection Clause. *See* INA § 309(a) (applying the normal physical presence requirement to citizen fathers).

The Supreme Court agreed. The Court, applying heightened scrutiny to the gender-based classification, held that § 309(c) violates the Equal Protection Clause because it is based on out-of-date gender dynamics and does not substantially relate to an important government interest. To remedy the violation, the Court struck this exception for unwed citizen mothers, leaving to Congress to devise a new statutory scheme.

Of note, the Court indicated that not all gender-based distinctions in the INA are constitutionally suspect. *See* Pages 15-16 (citing, for example, certain visa preferences and the paternal acknowledgment requirement in INA § 309(a)(4)).